IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

H.C.P.No.418 of 2006

Sivakumar .. Petitioner

-vs-

1.The State of Tamil Nadu
rep. by its Secretary to Govt.,
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioner Sivakumar S/o Mohan has been detained under Act 14/82 as a "Goonda" vide detention order dated 03.04.2006 on the file of the second respondent herein, made in Memo No.88/BDFGISV/2006 quash the same and consequently direct the respondents herein to produce the body and person of the said detenu before this Court and thereafter set him at liberty from the Central Prison, Chennai.

For Petitioner : Mr. V. Parthiban for Mr.M.Rajavelu

For Respondents : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The detenu, by name Sivakumar who is detained as a 'Goonda' under Tamil Nadu Prevention of Dangerous activities of Boot-leggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14, 1982), challenges the same in this petition.

2. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor.

3. Learned counsel appearing for the petitioner raises the only contention that the vital fact, namely that the detenu was released on bail in Cr.No.129 of 2006 on the file of E.1 Mylapore Police Station by an order of the learned Magistrate dated 24.03.2006, which was not placed before the detaining authority, vitiates the detention order. In other words, according to him, had this vital fact been placed before the detaining authority, the decision could have been different. In support of the above contention, learned counsel brought to our notice the requisition for remand made by the sponsoring authority, wherein he has sought for remand of the detenu in respect of Cr.Nos.129 and 130 of 2006. He also placed the order of the learned 18th Metropolitan Magistrate, Saidapet, Chennai-15 dated 24.03.2006 granting bail in favour of the detenu in a case relating to Cr.No.129 of 2006. On the other hand, learned Additional Public Prosecutor, by taking us through the details relating to fifth adverse case which is Cr.No.129 of 2006 on the file of E-1 Mylapore Police Station and the ground occurrence, namely Cr.No.130 of 2006 of the same Police Station, submitted that inasmuch as the ground case relates to major offences and adverse case No.5 relates to smaller offences, the detaining authority is fully justified in basing its conclusion with reference to the ground case. He also relied on two decisions of this Court, viz. 2006(3) C.T.C.650[Revathy vs. State of Tamil Nadu] and H.C.P.No.1304 of 2005 dated 14.03.2006 in support of his stand.

4. In the light of the rival contentions, we verified the details furnished in the grounds of detention as well as the documents available in the paper book. In paragraph No.4 of the grounds, the detaining authority, after narrating the details regarding the ground case and the detenu's activity, after finding that the detenu is in

remand in E-1 Mylapore Police Station Cr.No.130 of 2006 and that he has moved an application before the Principal Sessions Court, Chennai, in Cr.l.M.P.No.2341 of 2006 and that the same is pending and further finding that there is every likelihood that he may come out on bail and in that event, he will indulge in further activities, which will be prejudicial to the maintenance of public order, passed the impugned order of detention. According to the learned counsel, while arriving at the subject to the satisfaction, the detaining authority has not at all taken note of Cr.No.129 of 2006 and the order passed by the learned Magistrate dated 24.03.2006 granting bail. It is rightly pointed out by the learned Additional Public Prosecutor that in the said case, namely adverse case No.5 in Cr.No.129 of 2006, the offences mentioned are lesser compared to the ground case dated 08.03.2006. The details furnished in the grounds show that in adverse case No.5 in Cr.No.129 of 2006, the offences are under Sections 341, 324, 332, 336, 307, 427 and 506(2)IPC, namely wrongful restraint, endangering human body, voluntarily causing hurt to deter a public servant from discharging his duty, attempt to murder, mischief to property and criminal intimidation, as such punishable under chapters 16, 17 and 22 of the Code.

5. In this regard, it is useful to refer the earlier decision of this Court reported in 2006(3)CTC 650, wherein under similar circumstances, a Division Bench of this Court, after finding that the ground case is graver in nature, concluded that if the graver offence is taken into consideration while passing the order of detention, the ultimate decision taken by the detaining authority cannot be faulted with and rejected a similar contention and ultimately confirmed the order of detention. A similar view has been expressed in the order dated 14.03.2006 passed in H.C.P. No.1304 of 2005.

6. In the light of what is stated above, we find that though even in the requisition for remand the detaining authority has referred to two Crime numbers, namely Cr.No.129 of 2006 which relates to fifth adverse case and Cr.No.130 of 2006 which relates to ground case, the detaining authority has taken note of the fact that the ground case relates to major offences (which we have already referred to) and has considered all those materials relating to the ground occurrence and therefore, we are satisfied that the ultimate order passed by the detaining authority cannot be faulted with.

7. In these circumstances, we do not find any error or valid ground for interference. Accordingly, the petition fails and the same is dismissed.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Secretary to Govt.,
of Tamil Nadu
Prohibition and Excise Department,
Fort St.George, Chennai - 9.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai 8.

3. The Superintendent Central Prison
Chennai.

4. The Public Prosecutor
High Court, Madras

5. The Joint Secretary
to the Government of Tamil Nadu
Public (L & O)
Fort Saint George
Chennai 9

+ one cc to Mr. M. Rajavelu, Advocate sr no. 34548

AKM(CO)

NM(18.08.2006)

H.C.P.No.418 of 2006